PUBLIC PROSECUTOR v. THEN MEE KOM
PUBLIC PROSECUTOR v. CHAN KAM LAI

[R. Cr. J. (Ajaib Singh J.) April 21, 1983]
[Ipoh – Perak Criminal Revision No. 28 of 1982]

Criminal Law & Procedure – Criminal Revision – Accused separately charged under s. 15(1), Copyright Act 1969 – Proceedings not instituted within 6 months of arrest – Several irregularities rendering proceedings bad and untenable – Copyright Act 1969, s. 15(1) & 15 (4)(b).

Copyright – Charge under s. 15(1) of Copyright Act 1969 – Scope of s. 15(4) of Copyright Act 1969

The present case involved criminal revision relating to Ipoh Arrest Case CAC 675/81 and Kampar Arrest Case No. A185/81 wherein 2 accused persons were separately charged under s. 15(1) of the Copyright Act 1969 (the said Act). Learned counsel for the accused persons contended that after the copies of the video tapes were seized no proceedings against either of the accused persons were instituted within 6 months of the seizure as required under s. 15(4) of the said Act. It was further argued that proceedings were deemed to be instituted only when the accused was arrested and charged in Court. But as this was not done in either of the 2 cases, the magistrate's court had no jurisdiction to hear the cases.

The record showed that in Ipoh Arrest Case CAC 675/81 the search warrant was ordered to be issued by the magistrate on February 10, 1981. The search warrant was however signed by the Registrar of the Sessions Court. The record also showed that the warrant of arrest which was ordered to be issued on July 29, 1981 was duly signed and sealed but left undated.

In Kampar Arrest Case No. A185/81 the police raided the premises of the accused and seized copies of the video tapes on January 13, 1981 without any search warrant.

Held: (1) the arrest of the accused person is the commencement or is the institution of proceedings within the meaning of s. 15(4)(b) of the said Act.

(2) the magistrate who considers the information on oath for the issue of a search warrant under s. 15(4) has to sign the warrant himself for otherwise he is not issuing it under his hand. This judicial function of the magistrate cannot be delegated. In Ipoh Arrest Case CAC 675/81, the search warrant was therefore invalid rendering the proceeding null and void;

(3) in case CAC 675/81 the omission to date the warrant of arrest was a serious defect which left it invalid and could not be acted upon;

(4) in case CAC 675/81, if the seizure of the tapes had been lawful the arrest of the accused on August 18, 1981 was outside the 6 month's limit and therefore the magistrate's court had no jurisdiction to hear the case;

(5) in Kampar Arrest Case No. A185/81 the raid on the premises of the accused and seizure of copies of video tapes without any search warrant was a serious irregularity rendering the search and seizure of the video tapes illegal. Since proceedings under s. 15(1) of the Copyright Act can only commence if the infringing copies are lawfully seized under s. 15(4) and not otherwise, the arrest of the accused and all subsequent proceedings were invalid;

(6) in the interest of justice the accused person should be acquitted and discharged and the tapes be returned to them.

CRIMINAL REVISION.

Haidar bin Mohamed Noor (Deputy Public Prosecutor) for the Prosecution.

Hira Singh (*Ms Asbir Kaur* with him) for the accused.

Cur. Adv. Vult.

Ajaib Singh J.: This criminal revision relates to Ipoh Arrest Case CAC 675/81 and Kampar Arrest Case No. A185/81 wherein two accused persons were separately charged under section 15(1) of the Copyright Act 1969. The main point taken by learned counsel for the accused persons was that after the copies of the video tapes were seized no proceedings against either of the accused persons were instituted within six months of the seizure as required under section 15(4) (b) of the Copyright Act. It was submitted that proceedings are deemed to be instituted only when the accused is arrested and charged in court. But as this was not done in either of these two cases the magistrate's court had no jurisdiction to hear the cases. The learned Legal Adviser on the other hand contended that proceedings are deemed to be instituted when the informations for the warrants of arrest were laid before the magistrate which in both cases were well within the six months' period.

Section 15(4) (b) is as follows–

(4) If information is given upon oath to any magistrate that there is reasonable cause for suspecting that there are in any house, premises, vessel or other place any infringing copies (or any contrivance used or intended to be used for making infringing copies) or capable of being used for the purpose of making infringing copies by means of or in relation to which any offence under sub-section (1) of this section has been committed, he may issue a warrant under his hand by virtue of which any police officer named or referred to in the warrant may enter the house, premises, vessel or other place at any reasonable time by day and search for and seize any such copy or contrivance; and if a copy or contrivance is seized under this sub-section in connection with an offence and –

(a) in proceedings brought under this section in connection with the offence no order is made under sub-section (2) of this section as to the copy or contrivance; or

(b) no such proceedings are instituted within six months of the seizure,

the copy or contrivance shall be returned to the person in whose possession it was when it was seized or, if it is not reasonably practicable to return it to that person, shall be disposed of in accordance with the law regulating the disposal of lost or unclaimed property in the hands of police authorities.

Several authorities were cited by both parties and after considering all these I am of the opinion that under section 15(4) (b) of the Copyright Act proceedings are instituted when the accused person is arrested with or without a warrant. The laying of the information and the issue of the warrant of arrest are not the institution of proceedings. The arrest of the accused is the commencement or is the institution of proceedings within the meaning of section 15(4) (b) of the Copyright Act.

I shall deal with each case briefly but I might as well say it here at the outset that after perusing the records in these two cases I find that there are grave irregularities in them rendering the proceedings altogether bad and untenable.

Ipoh Arrest Case CAC 675/81

In this case a search warrant was ordered to be issued by the magistrate on February 10, 1981. The search warrant itself was however not signed by this magistrate but by the Registrar of the Sessions Court. This in my view was improper and rendered the search warrant invalid. Under section 15(4) of the Copyright Act the search warrant must be signed by the magistrate who issues it and not by any other officer of the court. The relevant words in subsection (4) of section 15 of the Copyright Act are that the magistrate "may issue a warrant under his hand". This clearly means that the magistrate who considers the information on oath for the issue of a search warrant under section 15(4) has to sign the warrant himself for otherwise he is not issuing it under his hand. In short this judicial function of the magistrate cannot be delegated.

In some other enactments which provide for the issue of search warrants where the words "under his hand" are excluded the warrant may be signed by another magistrate or by the registrar of the sessions court by virtue of section 5(1) (c) of the Subordinate Courts which reads as follows –

5.(1) All summonses, warrants, orders, rules, notices and mandatory processes whatsoever, whether civil or ciminal, shall –

(a) ...

(b) ...

(c) if issued or made by a Magistrates' Court, be signed by a Magistrate of either class within the local limits of whose jurisdiction the court is situate, or be signed by the Registrar of a Sessions Court situate in the same town or place as the Magistrates' Court;

Under section 56 of the Criminal Procedure Code it is stated that a magistrate may issue a search warrant but no mention is made in the section that the search warrant has to be issued under the hand of the magistrate. Similarly under section 17 of the Common Gaming Houses Ordinance 1953 and section 27(1) of the Dangerous Drugs Act 1952 which empower a magistrate to issue search warrants no mention is made that the search warrant has to be issued under the hand of the magistrate. Under these enactments the search warrant need not be signed by the magistrate who actually orders it but may be signed by any other magistrate within the jurisdiction or signed by the registrar of the sessions court. But not so in the case of a search warrant issued under section 15(4) of the Copyright Act which must be signed by the same magistrate who issues it. This is an essential requirement for the issue of a valid search warrant under section 15(4) which must be strictly complied with.

In the circumstances therefore I hold that the search warrant in this case was invalid rendering the whole proceedings null and void.

The premises of the accused were raided and copies of video tapes seized on February 11, 1981. Infringing copies of copyright goods can only be seized under a valid search warrant but in this case the raid and the seizure of the video tapes were illegal and unlawful. On July 28, 1981 the police laid an information for a warrant of arrest against the accused. The offence being a seizable offence there was no need really for a warrant of arrest. However the police thought it fit to apply for a warrant and the issue thereof was certainly not irregular. But the laying of the information and the issue of the warrant of arrest cannot be taken as the institution of proceedings for otherwise this may well give the police more time than was intended by the legislature for the institution of proceedings under the Copyright Act because a warrant on information may well be issued within the six months' period but the police may not apprehend the accused until after the six months' period is over which would have the effect of giving the police more time than was intended by the legislature as it actually happened in this

case when the warrant was ordered to be issued a day after the laying of the information but the accused was arrested on August 18, 1981 which was more than six months from the date of the seizure of the tapes. Again the warrant of arrest which was ordered to be issued on July 29, 1981 was duly signed and sealed but was left undated. This was also a serious defect which rendered the warrant invalid and one that could not be acted upon. If the seizure of the tapes had been lawful the arrest of the accused on August 18, 1981 was outside the six months' limit and therefore the magistrate's court had no jurisdiction to hear the case.

Kampar Arrest Case No. A185/1981

In this case the police raided the premises of the accused and seized copies of the video tapes on January 13, 1981 without any search warrant. This was a serious irregularity rendering the search and seizure of the video tapes illegal. Proceedings under section 15(1) of the Copyright Act can only commence if the infringing copies are lawfully seized under section 15(4) and not otherwise. Therefore the arrest of the accused on July 7, 1981 on a warrant of arrest and all subsequent proceedings were invalid.

Conclusion

The irregularities in both cases were far too serious and cannot be cured under section 422 of the Criminal Procedure Code. It is well over two years now since the police started to work on these two cases so that it will be harsh and unreasonable for any further action to be taken against these two persons. In the interest of justice I order that the accused be acquitted and discharged and the tapes be returned to them.

Order accordingly.

Solicitors: *Asbir, Hira Singh & Co.*

TELEVISION BROADCASTS LTD. & ORS. v. MANDARIN VIDEO HOLDINGS SDN. BHD.

[O.C.J. (Chan J.) May 19, 1983]
[Kuala Lumpur – Civil Suit No. C2427 of 1982]

Copyright – Piracy – Claim against videopirates – Ex parte application – Anton Piller order sought for – Order allowed by Court.

Copyright – When copyright subsists – Films must be published in Malaysia within 30 days of their being first shown in any country – Meaning of "published" in s. 2(2)(a) – Copyright Act 1969, ss. 2(2)(a) & 6(1).

Practice & Procedure – Anton Piller order sought for – Ex parte application against videopirates – Order granted by Court.

Evidence – Self-incrimination evidence – Privilege against – Effect of Anton Piller order on self-incrimination evidence – Privilege withdrawn by Evidence Act 1950, s. 132(2).

Censorship – Censorship Certificate – Offence to exhibit, sell, hire or distribute film without certificate – Films (Censorship) Act 1952, ss. 9(2), 9A(2), 15(1)(a) & 25(1)(d).

The first 2 plaintiffs, TVB and RTV were producers of the television series and programmes which were shown on Hong Kong Television. TVB and RTV were owners of the copyright in those television films or soap operas. The third plaintiff Golden Star had the exclusive right from them to reproduce those films on video cassettes for distribution to their dealers or outlets for hiring out to the public. From investigations conducted by Golden Star, the defendants had been hiring out pirated copies of their television series on the black market. They had not given permission to the defendants to make copies of or put on video cassettes their films. The plaintiffs therefor sought for an *ex-parte* order, the *Anton Piller* order before the Writ was even served against the defendants. The plaintiffs wanted to take the defendants by surprise so that they could not get rid of incriminating evidence and their stock of infringing video cassettes. The plaintiffs therefore feared that unless they obtain an *Anton Piller* order the defendants would easily remove, destroy or erase incriminating documents and articles. The said order was granted by the present court. The defendants objected on the following grounds:

(a) the defendants claimed privilege against self-incrimination;

(b) the plaintiffs had allegedly committed offences contrary to section 15(1) of the Films (Censorship) Act 1952, they lost their copyright to the films;

(c) the films were not made available in sufficient quantities to satisfy the reasonable requirement of the public under section 2(2)(a) of the Copyright Act 1969.

Held: (1) there was a strong *prima facie* case against the defendants that the plaintiffs had been dealing in illicit films and that the plaintiffs had satisfied the requirements for the making of an *Anton Piller* order,